

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:22-cv-00242-MR**

DESMOND HARDY,)	
)	
Plaintiff,)	
)	
vs.)	
)	
FNU STEEL, et al.,)	<u>ORDER</u>
)	
Defendants.)	
_____)	

THIS MATTER is before the Court *sua sponte*.

The pro se incarcerated Plaintiff filed this action pursuant to 42 U.S.C. § 1983. [Doc. 1]. On April 24, 2023, the Court dismissed the Complaint on initial review and granted the Plaintiff 30 days to file a superseding Amended Complaint. [Doc. 11]. The Plaintiff was cautioned that, “[s]hould Plaintiff fail to timely amend his Complaint in accordance with this Order, the Court will dismiss this action without prejudice.” [*Id.* at 13]. A copy of the Order on initial review was mailed to the Plaintiff at his address of record on the same day it was entered. On May 1, 2023, the Court received a Letter from the Plaintiff that is post-marked April 26, 2023, in which the Plaintiff asks about

the status of the case. [Doc. 12]. The Clerk mailed the Plaintiff a courtesy copy of the docket sheet on May 5, 2023.¹

The Plaintiff has failed to file an Amended Complaint, and the time to do so has expired. The Plaintiff appears to have abandoned this action, and the Court is unable to proceed. This case will therefore be dismissed without prejudice. See Fed. R. Civ. P. 41(b) (“If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.”); Link v. Wabash R.R. Co., 370 U.S. 626, 630-33 (1962) (although Rule 41(b) does not expressly provide for *sua sponte* dismissal, Rule 41(b) does not imply any such restriction and a court has the inherent power to dismiss a case for lack of prosecution or violation of a court order).

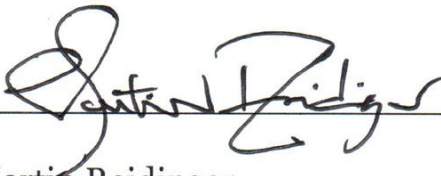
IT IS, THEREFORE, ORDERED that this action is **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Clerk of Court is directed to terminate this action.

¹ The docket sheet reflects that the Complaint was dismissed without prejudice on April 24, 2023; that “[t]he Plaintiff shall have thirty (30) days in which to amend his Complaint;” and that, “[i]f Plaintiff fails to so amend his Complaint, the matter will be dismissed without prejudice....”

IT IS SO ORDERED.

Signed: June 13, 2023

A handwritten signature in black ink, appearing to read "Martin Reidinger", written over a horizontal line.

Martin Reidinger
Chief United States District Judge

